

1
2 **WO**

3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9
10 Stephen Louis Rudisill,

No. CV-13-01149-TUC-CKJ

11
12 Plaintiff,

ORDER

13
14 v.

15
16 Charles Ryan, et al.,

17
18 Defendants.
19
20

21 Pending before the Court is Timothy Paul Olmos' Motion to Intervene in the
22 instant case. (Doc. 126.) Also before the Court is Olmos' Motion for Sanctions Against
23 Defense Counsel Paul Carter. (Doc. 131.) The Court has reviewed Olmos' motions, as
24 well as Defendants' Response to Motion to Intervene (Doc. 126), Plaintiff Rudisill's
25 Opposition to Motion to Intervene by Timothy Paul Olmos (Doc. 128), and Defendant's
26 Motion to Strike Non-Party Olmos's Ex Parte Motion for Sanctions (Doc. 132). The
27 Court will deny Olmos' Motion to Intervene as untimely. Further, Olmos has no standing
28 to request sanctions.

1 ***Procedural History***

2 On September 13, 2013, Stephen Rudisill filed a *pro se* civil rights complaint
 3 against Defendants Charles Ryan, Robert Patton, Therese Schroeder, and Danial
 4 Lundberg.¹ (Doc. 1). The complaint alleged Defendants violated Rudisill's Fourteenth
 5 Amendment rights by segregating inmates based on race. (Doc. 1 at 10.) After
 6 substituting counsel (Doc. 14), Rudisill filed a First Amended Prisoner Civil Rights
 7 Complaint on February 4, 2014. (Doc. 19.) The parties participated in multiple
 8 settlement conferences in front of the Honorable Charles R. Pyle on January 30, April 6,
 9 June 30, and August 24, 2015. (Doc. 85, 90, 94, 99.) The parties finally advised the
 10 Court they reached a settlement in the action on December 22, 2015. (Doc. 113 at 2.)

11 On February 5, 2016, the parties entered into an Amended Stipulation for Order
 12 ("Stipulation"). (Doc. 119.) The Stipulation denied any allegations made in the
 13 complaint, and formulated an intricate program that would "apply to the 10 [Arizona
 14 Department of Corrections ("ADC")] complexes: Douglas, Eyman, Florence, Lewis,
 15 Perryville, Phoenix, Safford, Tucson, Winslow, and Yuma." (*Id.* 119 at 2.) It also
 16 outlined policies and procedures necessary to implement an "Integrated Housing
 17 Program" ("IHP"). "The purpose of the IHP is to foster racial equality among inmates by
 18 assigning inmates to integrated housing placements, with the intention that doing so will
 19 enhance rehabilitation and security interests." (*Id.* at 119.) The Stipulation also agreed to
 20 develop and implement a "Nondiscriminatory Employment Program" ("NEP"), again to
 21 foster racial equality among inmates by employing them regardless of race, with limited
 22 exceptions when racial discrimination is narrowly-tailored to serve a compelling state
 23 interest and when race is only one factor in employment selection. (*Id.* at 8-9.) The
 24 parties developed a schedule showing estimated dates for the ADC to incorporate the
 25 procedures throughout its facilities. (*Id.* at 9.) The IHP and the NEP were to be
 26 implemented in all dormitory sex offender units between January 1, 2017 and March 1,

27
 28 ¹ Two Defendants took the place of their predecessors and are now included in
 their representative capacities. Alfred Ramos assumed Therese Schroeder's position, and
 Panann Days has replaced Danial Lundberg.

1 2018. (*Id.*)

2 The Court terminated this case on February 8, 2016. (Doc. 120.)

3 Subsequently, on December 12, 2016, Timothy Paul Olmos filed the pending
4 Motion to Intervene. (Doc. 126.) In it, Olmos states he is housed in the Huachuca Unit of
5 the ADC, in medium-custody housing for sex offenders. (*Id.* at 2.) He argues that sex
6 offenders incarcerated at ADC facilities cannot work in “premium jobs” in which other
7 similarly-situated inmates may be employed. Olmos claims he has a right to intervene in
8 the instant case because he has an important property interest--his work--that has been
9 violated, and the Court’s failure to grant intervention would impair his ability to protect
10 that interest because the existing parties do not adequately represent it. (*Id.* at 1, 3.)

11 Olmos believes his interest in this case stems from the fact that he and other sex
12 offenders are subject to the terms of the IHP and NEP. (*Id.* at 3.) He claims that since the
13 IHP applies to all inmates, he should be afforded the equal right to work in the “premium
14 jobs”, just like other non-sex offender inmates, but because sex offenders are not able to
15 be in lower than medium custody,² he is prevented from ever obtaining these higher level
16 jobs. Olmos concludes that this prohibition eliminates incentives to participate in the IHP
17 or NEP, and because there is no incentive, the IHP and NEP cannot “accomplish its goal
18 of total inmate compliance with the IHP.” (*Id.* at 3.)

19 At no point in either his Motion or Reply does Olmos claim that he was
20 discriminated against because of race; merely that his classification based on sex offender
21 status confines him to medium custody, which in turn limits his ability to obtain higher-
22 level employment within the ADC.

23 ***Intervention of Right***

24 The Court must permit anyone to intervene who claims an interest relating to the .
25 . . transaction that is the subject of the action, and whose interests would be impeded by
26 the disposition of the action. Fed.R.Civ.P. 24(a)(2). But, “[i]t is well settled in this circuit
27 that motions to intervene for substantive reasons—to revisit original settlements—must

28 ² This classification of sex offenders to medium custody is found in the Arizona
Department of Corrections Inmate Classification Order 801. (Doc. 126-1 at 8 of 45.)

1 be timely.” *County of Orange v. Air California*, 799 F.2d 535, 537 (9th Cir. 1986), *cert.*
 2 *denied*, 480 U.S. 946, 107 S.Ct. 1605, 94 L.Ed.2d 791 (1987); *Alaniz v. Tillie Lewis*
 3 *Foods*, 572 F.2d 657, 659 (9th Cir.), *cert. denied*, 439 U.S. 837, 99 S.Ct. 123, 58 L.Ed.2d
 4 134 (1978). The question of timeliness is at the sound discretion of the trial court. *Nat’l*
 5 *Ass’n for Advancement of Colored People v. New York*, 413 U.S. 345, 356, 93 S.Ct. 2591,
 6 37 L.Ed.2d 648 (1973); *United States v. Alisal Water Corp.*, 370 F.3d 915, 923 (9th Cir.
 7 2004). “When adjudging the timeliness of substantive motions to intervene, this circuit
 8 looks at: 1) the stage of the proceeding at which an applicant seeks to intervene; 2) the
 9 prejudice to other parties; and 3) the reason for and length of the delay.” *Air California*,
 10 799 F.2d at 537; *Alaniz*, 572 F.2d 657 at 659. “[P]arties who delay in attempting to
 11 intervene, and who end up doing so only after the original parties have reached an
 12 acceptable settlement, should not be able, without good reason, to intervene when their
 13 intervention may well cause substantial prejudice to the original parties.” *Empire Blue*
 14 *Cross & Blue Shield v. Janet Greeson's A Place For Us, Inc.*, 62 F.3d 1217, 1219 (9th
 15 Cir. 1995).

16 Olmos attempts to intervene almost a year after the parties entered into the
 17 Stipulation. Motions to intervene may be found untimely in complicated litigation where
 18 the motion was not filed until after settlement. *See e.g., Air California*, 799 F.2d at 538
 19 (intervenor untimely when motion was filed after proposed settlement was reached by
 20 parties after five years of negotiations); *Alaniz*, 572 F.2d 657 at 659 (motion to intervene
 21 filed approximately two weeks after consent decree approved deemed was untimely);
 22 *Tesseyman v. Fisher*, 231 F.2d 583 (9th Cir. 1955) (intervenor’s motion was untimely
 23 where litigation extended over a year and motion was not filed until after trial). This case
 24 took approximately three years to litigate. The parties engaged in four separate settlement
 25 conferences and the complex terms of the agreement necessitated revision before the
 26 Stipulated Order was finalized (Doc. 114 and Doc. 119). Renegotiation of this agreement
 27 would result in prejudice because a modification of the Stipulation would unravel the
 28 original settlement. *See e.g., Empire*, 62 F.3d at 1220. The purpose of the agreement was
 to protect inmates from racial discrimination, not classifications based on sex offenses.

1 Further, the classifications Olmos' objects to are not part of the Stipulated Order, rather
2 they are designations included in the ADC's Inmate Classification Order 801. Allowing
3 Olmos' intervention would force the parties to negotiate policies never presented for
4 litigation. In addition, the IHP and NEP programs are already being implemented, and
5 intervention would postpone or eliminate future progress under the Stipulation.
6 Defendants would also suffer prejudice by incurring costs were they required to revamp
7 their housing and employment procedures to accommodate Olmos' sex offender
8 demands.

9 Additionally, Olmos asserts he was unable to file his motion before because he did
10 not have knowledge that the litigation affected him until the IHP and NEP programs were
11 implemented in the sex offender units. (Doc. 130 at 5.) Olmos' intervention needed to
12 occur when he knew "or ha[d] reason to know that his interests might be adversely
13 affected by the outcome of litigation." *United States v. Alisal Water Corp.*, 370 F.3d 915,
14 923 (9th Cir. 2004). Although Olmos brought the pending Motion soon after speculating
15 his interest in his job may be affected by the Stipulation, in fact, the Stipulation had no
16 effect on his employment situation. Olmos' ability to achieve a lower custodial
17 classification and a higher level of employment is not affected by implementation of the
18 policies determined in settlement. Absent the Stipulation, Arizona Department of
19 Corrections Department Order 801 would still classify him as a medium custody inmate.
20 In addition, Olmos has not asserted any racial discrimination under the IHP or NEP; he
21 was not prevented from obtaining "premium" employment through any racial
22 classification, only his sex offender status. Therefore, Olmos' asserted interests in his sex
23 offender custody status and employment are not impeded by the disposition of this
24 matter, and despite the purported timeliness of his Motion, he is not entitled to an
25 intervention of right.

26 The Court finds Olmos' Motion is untimely; it was filed long after the conclusion
27 of the action, the parties would suffer prejudice upon Olmos' intervention, and Olmos has
28 shown no interest that was or will be negatively impacted by the litigation.

Permissive Intervention

1 Apart from an intervention of right, the court may allow a party to intervene if that
 2 party has filed a timely claim and “has a claim or defense that shares with the main action
 3 a common question of law or fact.” Fed.R.Civ.P. 24(b)(1)(B). A finding of untimeliness
 4 defeats not only intervention of right but also permissive intervention. *United States v.*
 5 *Wash.*, 86 F.3d 1499, 1507 (9th Cir. 1996); *United States v. Ore.*, 913 F.2d 576, 589 (9th
 6 Cir. 1990).

7 Finding the Motion untimely, the Court need not address permissive intervention,
 8 however, the Court will address the question of whether Olmos’ Motion shares a
 9 common question of law or fact with the subject of the action.

10 ***Common Question of Law***

11 Prison policies which classify individuals by race are subject to strict scrutiny,
 12 meaning the policy must be narrowly-tailored to meet a compelling state interest.
 13 *Johnson v. California*, 543 U.S. 499, 509, 125 S.Ct. 1141, 160 L.Ed.2d 949 (2005); *see*
 14 *Turner v. Safley*, 482 U.S. 78, 84, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987) (“Prison walls
 15 do not form a barrier separating prison inmates from the protections of the Constitution . .
 16 . [Prisoners] are protected against invidious racial discrimination by the Equal Protection
 17 Clause of the Fourteenth Amendment.” (citations omitted)). Unlike racial classifications,
 18 however, sex offenders are not a suspect class subject to strict scrutiny, *United States v.*
 19 *LeMay*, 260 F.3d 1018, 1030 (9th Cir. 2001), nor do inmates have a constitutional right to
 20 employment while incarcerated. *Vignolo v. Miller*, 120 F.3d 1075, 1077 (9th Cir. 1997).
 21 Olmos’ classification as a sex offender is not subject to the same level of scrutiny that is
 22 implicated in the racial classification subject of the current action. Additionally, Olmos’
 23 claim does not assert a constitutional violation based on racial classification, as was
 24 litigated in this action. Instead, he raises the issue of whether sex offenders should be
 25 permitted to reside in lower security housing in order to be able to qualify for “premium
 26 employment.” Therefore, the action in this case and Olmos’ claims do not share a
 27 common issue of law.

28 ***Common Question of Fact***

1 Neither do the issues raised by Olmos share a common question of fact. Olmos'
2 Motion discusses sex offender classifications that are included in the ADC's Department
3 Order on Inmate Classifications 801, neither the terms of the Stipulation, nor claims of
4 racial discrimination are argued. Therefore, the facts upon which Olmos presents his
5 claim are separate and distinct. The Stipulation protects him from being discriminated
6 against based on race, not based on his criminal history. Therefore, even if the Court
7 conceded, *arguendo*, that Olmos' Motion was timely, the Court finds his claim does not
8 warrant permissive intervention in the terminated action. Olmos' grievance may have
9 merit, but intervention in this case is not appropriate.

10 ***Motion for Sanctions***

11 In his second motion, Olmos asks to Court to sanction defense counsel Paul
12 Carter. The Ninth Circuit has granted standing to non-parties to file for sanctions in
13 limited circumstances, specifically when the non-party is an involuntary participant in the
14 litigation. *Greenberg v. Sala*, 822 F.2d 882 (9th Cir. 1987) (non-parties to suit had
15 standing to request sanctions because they were named in the complaint and filing of
16 complaint caused non-party to acquire attorney's fees). Olmos' situation is not such a
17 circumstance. Olmos may not intervene, and is not a party. Nor has he been drawn into
18 the litigation, for while he is subject to the terms of the IHP and NEP, his grievance, as
19 noted heretofore, is not a result of the current action but an ADC administrative measure
20 separate from the Stipulation. The Court agrees with our sister circuits which affirm that
21 in general, a non-party does not have standing to file a motion for sanctions. *See e.g.*,
22 *New York News v. Kheel*, 972 F.2d 482, 488 (2nd Cir. 1992); *Port Drum v. Umphrey*, 852
23 F.2d 148, 150 (5th Cir. 1988) ("Rule 11 is designed to regulate proceedings among
24 parties already before the court in a particular case."); *see also* 5A Charles Alan Wright
25 & Arthur R. Miller, Federal Practice and Procedure § 1337.1 (3d ed. 2004).

26 Further, the text of the Advisory Committee Notes on Rule 11 supports limiting
27 motions for sanctions to parties. The Notes for the 1983 amendments state "[a] party
28 seeking sanctions should give notice to the court and the offending party" and make
explicit the court's authority to impose sanctions on its own motion "in order to overcome

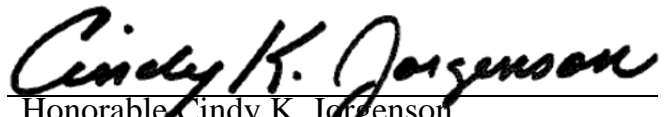
1 the traditional reluctance of courts to intervene unless requested by one of the *parties*.”
2 Fed.R.Civ.P. 11 advisory committee’s note to 1983 amendment (emphasis added). The
3 Court will not extend the rule’s meaning to allow a non-party, who has been denied
4 intervention, the right to file for sanctions against defense counsel.

5 Accordingly, IT IS ORDERED:
6

- 7 1. Timothy Olmos’ Motion to Intervene (Doc. 126.) is DENIED.
8 2. Defendant’s Motion to Strike Non-Party Olmos’s Ex Parte Motion for Sanctions
9 (Doc. 132.) is GRANTED and Olmos’ Motion for Sanctions Against Defense
10 Counsel Paul Carter (Doc. 131.) is DENIED. The Clerk of the Court shall strike
11 the Ex Parte Motion for Sanctions (Doc. 131) from the Court docket.
12 3. The Clerk of Court shall mail a copy of this Order to:

13 Timothy Olmos #196384
14 ASPC Kingman-Huachuca Unit
15 P.O. Box 6639
16 Kingman, Arizona 86402

17 Dated this 6th day of March, 2017.
18

19 
20 Honorable Cindy K. Jorgenson
21 United States District Judge
22
23
24
25
26
27
28